

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-04-92(1)
	§	C.A. No. C-05-081
FRANCISCO RODRIGUEZ,	§	
Defendant/Movant.	§	

**ORDER GRANTING APPLICATION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND COLLECTION ORDER**

A judgment of conviction was entered against Defendant Francisco Rodriguez (“Rodriguez” or “Appellant”) on August 12, 2004. (D.E. 16). He did not file a direct appeal. On February 16, 2005, Rodriguez filed a motion pursuant to 28 U.S.C. § 2255. (D.E. 17). The district court dismissed the motion and *sua sponte* denied Rodriguez a Certificate of Appealability. (D.E. 26). Final judgment was entered on September 12, 2005. (D.E. 27). On September 27, 2005, the Clerk received Rodriguez’s Notice of Appeal, appealing the denial of his § 2255 motion. (D.E. 28). On October 27, 2005, Rodriguez filed a motion to proceed on appeal *in forma pauperis*, which is addressed herein. (D.E. 30).

Appellant’s *in forma pauperis* data sheet reflects he had a balance, as of October 19, 2005, of \$20.38 in his inmate account. In the six months preceding his application, however, his account received deposits of \$480, in addition to payroll deposits totaling \$148.08. Moreover, his balance over the same six-month period was frequently over \$100.00. These figures demonstrate that although Rodriguez cannot afford to prepay the \$255 appellate filing fee, he can pay the fee in installments without undue hardship. While his appeal is not governed by the Prison Litigation Reform Act, there

is no prohibition against collection of the appellate filing fee in installments where an inmate has the ability to do so without undue hardship. Accordingly, the following orders are entered:

1. The Clerk shall file the Appellant's notice of appeal without prepayment of the appellate filing fee.
2. The Appellant is not required to pay an initial partial appellate filing fee.
3. The Appellant shall pay \$255, the balance of the full appellate filing fee, in monthly installments to the United States District Court.
4. The Bureau of Prisons shall deduct 20% of each deposit made to the Appellant's inmate trust account and forward payments to the United States District Court on a regular basis provided the account exceeds \$10.00.
5. The Appellant shall execute all consents and other documents required by the agency having custody of the Appellant to authorize the necessary withdrawals from his trust account.
6. The Clerk shall send a copy of this Order to the Inmate Accounting Officer and Paralegal Specialist, FMC Fort Worth, 3150 Horton Road, Fort Worth, Texas 76119-5996.

NOTICE TO THE APPELLANT:

If you do not wish to pay the appellate filing fee as set forth in this Order, you must notify the Court in writing, by letter or motion, that you do not wish to prosecute the appeal. Your notice must be mailed within 30 days of the date of this Order.

ORDERED this 14th day of November, 2005.



B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

